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Our File No.
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Via email (kivowitz.sharon@epa.gov)
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Assistant Regional Counsel
Office of the Regional Counsel – Region 2
United States Environmental Protection Agency
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Via email (lapoma.jennifer@epa.gov)
Jennifer LaPoma
Remedial Project Manager
New York Remediation Branch, Emergency
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United States Environmental Protection Agency
290 Broadway, 20th Floor
New York, NY 10007

Re: New Cassel/Hicksville Groundwater Contamination Superfund Site

Dear Ms. Kivowitz and Ms. LaPoma:

As you know, we represent Grand Machinery Exchange, Inc. ("GME") and 2632 Realty Development Corporation ("2632 RDC") in this matter. This is sent in response to the Settlement Agreement and Order on Consent For Remedial Design, Remedial Investigation/Feasibility Study, and Cost Recovery (the "Settlement Agreement") for the New Cassel/Hicksville Groundwater Contamination Superfund Site (the "Site") issued by the United States Environmental Protection Agency ("USEPA"), on July 23, 2014 and the letter, dated July 31, 2014 from Ms. Kivowitz, requesting comments on the Settlement Agreement prior to the August 18, 2014 in-person meeting. GME and 2632 RDC have the following comments at this time and reserve the right to provide additional comments.

1. Compliance with the Settlement Agreement is impossible. The Settlement Agreement requires each respondent to carry out the Remedial Design ("RD") scope of work for operable unit 1 ("OU1") and the Remedial Investigation/Feasibility Study ("RI/FS") for operable unit 3 ("OU3"). The Settlement Agreement requires 21 diverse sets of respondents to conduct the identical RD and RI/FS work at the same time. It requires each of t he 21-named

respondents to designate its contractors, consultants and project coordinator within 10 days of the Settlement Order's effective date. It also requires each respondent to submit a work plan for the OU1 RD and a Site Characterization Summary Report for OU3 within 30 days of the effective date of the Settlement Agreement. The Settlement Order does not provide any mechanism for coordination of the work. What is does provide is a recipe for chaos.

2. The Settlement Agreement, and USEPA's September 30, 2013 Record of Decision ("ROD") ambiguously define OU1 and OU3, making compliance impossible. OU1 is vaguely defined as an area south of the New Cassel Industrial Area and south of Old Country Road. Equally vague is the definition of OU3, which USEPA defines as a "far field" area south and downgradient of OU1. Given this pervasive vagueness, implementing the scopes of work will be more than challenging; it will be unmanageable.

3. The Settlement Agreement fails to include several potentially responsible parties ("PRPS"). On the flip side, the Settlement Agreement includes GME and 2632 RDC, neither of which is a PRP. The evidence establishes that the site owned by GME (36 Sylvester Street) was never a source of groundwater contamination. The evidence also establishes that the property owned for a short period of time by 2632 RDC (299 Main Street) was not a source of groundwater contamination to the Site. (Neither GME nor 2632 RDC ever operated at their respective sites; rather, their sole role was as out-of possession landlords.)

4. The Settlement Agreement incorrectly applies joint and several liability to all of the named PRPs. The alleged harm, however, is divisible geographically, temporally, and by chemical, toxicity and volume. As the harm is divisible, the USEPA lacks a rational basis to impose joint and several liability against the respondents.

5. The Settlement Agreement ignores the fact that several of the named parties, notably 101 Frost Street, LP, Adchem Corporation, Next Millennium Realty, LLC, Osram Sylvania, Inc., United States Department of Energy, and Vishay GSI, Inc., have documented plumes migrating from their sites in a southward direction, which plumes historically and currently contain exceptionally high concentrations of the chemicals of concern. Despite the fact that the data shows these parties are responsible for the groundwater plumes of concern, the Settlement Agreement fails to account for this and seeks to hold all the named parties individually and equally liable.

6. The USEPA, contrary to its own guidance, has made no effort to conduct *de minimis* settlement discussions with any PRPs. The USEPA's refusal to discuss *de minimis* settlements only serves to hinder the prompt resolution of the all of the PRPs responsibilities for this Site.

7. The deadlines in the scopes of work, set forth in Appendices 1 and 2 of the Settlement Agreement, are more than aggressive. They are technically infeasible. Appendix 1 calls for the pre-design work plan to be submitted within 45 days after the effective date and the implementation schedule for the design of major components of the remedy to be completed in 18 months. This is simply not achievable in light of the size and complexity of the Site.

Appendix 2, the scope of work for OU3, requires the Site Characterization Summary Report to be submitted within 30 days of the effective date. Yet, OU3 covers the so-called "far field" area, an area that has not yet been studied at all.

8. The Settlement Agreement also includes an unrealistic financial assurance requirement. It requires a minimum of $6 million in financial security, in the form of (a) an unconditional surety bond; (b) an irrevocable letter of credit, (c) a trust fund, or (4) an insurance policy. Very few PRPs will be able to provide this level of financial assurance, even if it is a combined requirement, not a per respondent obligation. This level of financial assurance amounts to more than 25% of the expected cost to implement the ROD in full and the rationale for sequestering such a large fund of money is not provided.

9. The USEPA has failed to establish that there is any imminent or substantial endangerment to the public. The Settlement Agreement notes that the remedial equipment already in place at the Bowling Green drinking water supply wells (the granulated activated carbon system, installed in 1990 and operating since 1993, and the air stripper tower, installed in 1995 and operating since 1997), are fully effective at maintaining safe and reliable drinking water. Furthermore, the USEPA's proposed remedial technique in the ROD, in-situ vapor stripping, was previously rejected by the State of New York because it was considered to be ineffective.

As noted above, these are our initial comments and we reserve the right to supplement this letter. We look forward to discussing these points in greater detail at the August 18th meeting.

Very truly yours,

Charlotte Biblow

Charlotte Biblow

Cc: Paul Merandi (via email)
Paula Scappatura (via email)